notice to a member who is at the time of calling and holding the meeting beyond the borders of the state. Stockslager, C. J., *dissenting*.

The decision in the present case is based on a chain of inferences and analogies drawn from a state statute. The general rule is to the contrary. Although an authority given to several for public purposes may be executed by a majority of their number, *Cooley v. O'Connor*, 12 Wall. 391; yet the action of a majority cannot be upheld when the minority took no part in the transaction, was ignorant of what was done, and gave no implied consent to the action of the others. *Schenck v. Peay*, Woolw. (U. S.) 175. All must be present to hear and consult, though a majority may decide. *People v. Coghill*, 47 Cal. 361. But if all have due notice of the time and place of meeting, it is no objection to the validity of the action taken that not all the members attend if there is a quorum. *Wilson v. Watersville School Dist.*, 46 Conn. 400; *Gildersleeve v. Board of Education*, 17 Abb. Pr. (N. Y.) 201.

RAILROADS—FIRES—NEGLIGENCE.—NORFOLK & W. R. Co. v. FRITTS, 49 S. E. 971 (VA.).—*Held*, that where it is shown that a fire was set by a locomotive, the railroad company is presumptively guilty of negligence.

Escape of fire from a locomotive raises the presumption of negligence against the company. *R. R. Co., v. Quaintance*, 58 Ill. 389; *Tanner v. N. Y. R. Co.*, 108 N. Y. 623. *Contra, Gandy v. R. R. Co.*, 30 Ia. 420; *R. R. Co. v. Paramore*, 31 Ind. 143. To rebut this presumption it is necessary to show that the locomotive was provided with the best and most approved appliances which were properly and carefully managed. *R. R. Co. v. Funk*, 85 Ill. 460; *Missouri Pac. R. Co. v. Texas R. Co.*, 41 Fed. 917. The railway company is called upon to use only "reasonable care, skill and diligence." *Burroughs v. Housatonic R. Co.*, 15 Conn. 124; *Eddy v. Lafayette*, 49 Fed. 807. Failure to employ the best appliances in known use is want of ordinary care and prudence. *R R. Co. v. Peninsular Land Co.*, 27 Fla. 1; *Smith v. Old Colony R. Co.*, 10 R. I. 22. Frequent setting out of fires raises presumption of negligence. *R. R. v. Kincaid*, 29 Kan. 654. The highest and clearest evidence is not required to rebut the presumption of negligence raised by escape of fire. *Spaulding v. R. R. Co.*, 30 Wis. 110.

REAL PROPERTY—RAILROAD RIGHT OF WAY—ADVERSE POSSESSION.—NORTHERN PACIFIC R. CO. v. ELY, 25 SUP. CT. 302.—*Held*, that a private person cannot obtain title to a railroad right of way by adverse possession. Harlan, J., *dissenting*.

This decision follows the case of *North. Pac. R. Co. v. Townsend*, 190 U. S. 267, and must now be considered as the federal rule. A similar rule was laid down in *South. Pac. R. Co. v. Hyatt*, 132 Cal. 240, and *Collett v. Board of Comm'rs.*, 119 Ind. 27. With these two exceptions, however, it is practically universally held, both in this country and in England, that title may be acquired by adverse possession to railroad property devoted to public use. *Ill. Cent. R. Co. v. Wakefield*, 173 Ill. 564; *Mathews v. Lake Shore R. Co.*, 110 Mich. 170; *Babbett v. Southeastern R. Co.*, L. R. 9 Q. B. 424. The objection to this rule has been stated to be that corporations cannot alien property devoted to public use. But, since adverse possession gives title to land without a presumption of a grant, power to alien would seem not to be essential. *Pittsburg, etc., R. Co. v. Stickley*, 155 Ind. 312.